Note: Pursuant to Fed. Cir. R. 47.8, this deposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

92-3479

DELL O. MCCUAIG,
Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent.

JUDGEMENT

ON APPEAL from the MERIT SYSTEMS PROTECTION BOARD in CASE NO(S). SE0831920094I-1

This CAUSE having been considered, it is

ORDERED and ADJUDGED:

Per Curiam (NIES, Chief Judge, BENNETT, Senior Circuit Judge, and CLEVENGER, Circuit Judge):

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

DATED_____ _____
Francis X. Gindhart, Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, KING COUNTY

In Re the Marriage of:	)	
	)	
DEL OAK MCCUAIG,	)	NO. 88-3-09411-1
	)	
Petitioner	)	
	)	
vs.	)	
	)	
HWA CHA MCCUAIG,	)	QUALIFIED
	)	DOMESTIC
	)	RELATION
	)	ORDER
Respondent.	)	

WHEREAS, this court has jurisdiction over all parties to this action and jurisdiction over the subject matter of the Order in this dissolution action;

WHEREAS, the parties to this Order and the court intend this Order to be a Qualified Domestic Relations Order (hereinafter "Order") as that term is used in the Retirement Equity Act of 1984, as amended, and intend that the provisions of this Order are to be administered and interpreted in accordance

with that Act;

NOW, THEREFORE, it is hereby ordered by the court as follows:

1. Definitions. The following are the definitions used in this Order:

A. "Participant": Del Oak McCuaig
915 Adams Street
Port Townsend, WA
SS#: 535-12-1448

B. "Alternate Payee": Hwa Cha McCuaig
1808 South 308th St
Federal Way, WA

SS#: 535-48-0724
Relationship to Participant:Former Spouse

C. "Plan": The U.S. Government
Civil Service Retirement
System

D. "Plan Administrator":
U.S. Office of Personnel
Management (OPM)
Retirement Programs
Washington D.C. 20415

2. This Order is entered into pursuant to R.C.W. 26.09 governing division of marital property (as that term is defined therein: between spouses and former spouses in dissolution actions.

3. This order hereby creates and

recognizes as to the above Plan the existence of the Alternate Payee's rights to receive the following portion of the participant's benefits:

Alternate Payee is awarded and shall receive 40 percent (40%) of Participant's gross monthly annuity, reduced for survivor's annuity.

4. Upon notice to the Plan and at the Alternate Payee's election, from and after the date of this Order, with respect to the Alternate Payee's interest in the Plan created and recognized in Paragraph 3 of this Order above, the Alternate Payee shall have the sole and exclusive right to the following:

A. To elect a post retirement survivor's annuity to the extent of the interest awarded her in Paragraph 3 of this Order.

B. The Alternate Payee shall be treated as the surviving spouse, to the extent of the interest awarded her in Paragraph 3.

5. The Plan Administrator shall be provided with a copy of the Order by the counsel for the Alternate Payee. Upon receipt, the Plan Administrator shall:

A. Immediately notify the Participant and Alternate Payee of:

1. The receipt of this Order; and

2. The Plan's procedures for determining whether this Order is QDRO.

B. Within a reasonable period of time, determine if this Order is a QDRO, and notify the court, Participant, and Alternate Payee of such determination.

6. The Alternate Payee shall include all benefits received by her pursuant to this order as and when received by her in her gross income and the Participant need not do so. For the purposes of Section 72 and 402(a)(1) of the Internal Revenue Code, the Alternate Payee and not the Participant shall be treated as distributee of any distribution or payment

made to her by any Plan pursuant to this Order.

7. It is intended by this Order that the interest of the Alternate Payee awarded to her be segregated from that of the Participant and paid to the Alternate Payee as set forth in this Order irrespective of any election made by the Participant.

8. Participant and Alternate Payee shall advise the Plan of any change of address.

9. The interest awarded to Alternate Payee herein shall not be revoked by the Participant, and the Participant shall not engage in any future conduct as Plan Participant, either alone or in concert with the Plan Administrator so as to deprive Alternate Payee of the maximum amount of benefits allowable.

10. The court retains jurisdiction over this matter to amend this Order to establish or maintain its status as a QDRO under the

Retirement Equity Act of 1984, as amended.

DONE IN OPEN COURT this 14TH day of November , 1990.

_____

Judge JOAN E. DUBUQUE

Presented by:
STEAD, VOGEL & EIDE

_____

Ernest B. Vogel, WSB#988
Attorney for Alternate Payee

Approved as to form:
FORSHAUG, McGORAN & SAWYER

_____

Dale B Sawyer, WSB#983
Attorney for Participant